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Attorneys for Defendants,
NEW YORK REXEL, INC. and SUMMERS
GROUP, INC. dba REXEL NORCAL VALLEY

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

RATOMIR POPESKOVICH and
BRANISLAVA POPESKOVICH, THE
ESTATE OF DEJAN POPESKOVICH,
DECEASED by and through his heirs,
RATOMIR POPESKOVICH and
BRANISLAVA POPESKOVICH,

Plaintiffs,

vs.

CANTEX, INC., REXEL NORCAL
VALLEY, INC., NEW YORK REXEL,
INC. ,

Defendants.

Case No. 2:05-CV-00732-WBS-KJM

**STIPULATION FOR ORDER
PRESERVING EVIDENCE;
ORDER THEREON**

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

WHEREAS, the parties to this litigation desire to protect the evidence in this case as it presently relates to the preservation of the ECM component of the 1998 Kenworth vehicle involved in the incident giving rise to this litigation;

WHEREAS, the parties also desire the ability to inspect and test said ECM for purposes of obtaining evidence relative to the claims asserted in the Complaint in this matter;

STIPULATION FOR ORDER PRESERVING EVIDENCE; ORDER THEREON

1 WHEREAS, the parties also desire to jointly retain Timothy Reust to
2 download the data from the ECM, to interpret the data and to provide it to the
3 parties;

4 WHEREAS, the parties further wish to avoid accusations of spoliation of the
5 evidence by any other party or parties' experts as it relates to the ECM and the ECM
6 data.

7 NOW THEREFORE, the parties below enter into the following
8 STIPULATION for entry of an ORDER by the Court herein allowing downloading,
9 inspection and/or testing of the ECM pursuant to the agreement set forth herein.

10 **AGREEMENT AND STIPULATION:**

11 By their duly authorized agents' signatures below, the parties to this lawsuit
12 agree to the terms and conditions set forth hereinafter.

13 **A. Joint Retention of Timothy Reust**

14 The parties have jointly retained Timothy Reust to download the data from the
15 above-described ECM component while still attached to the motor of the 1998
16 Kenworth, to preserve the data in electronic and printed formats and to distribute the
17 ECM data to the parties. Mr. Reust shall download the data from the ECM on the
18 date and time agreed by all parties to this action.

19 **B. Download, Interpretation and Distribution of ECM Data**

20 Timothy Reust will provide the parties with a written protocol to download the
21 data from the ECM and the date, time and location for the download. The parties
22 shall have twenty (20) days to serve written objections to the download protocol or
23 to the date, time or location for the download. The download shall proceed as
24 proposed by Mr. Reust if no party serves written objection to the proposed ECM
25 download protocol or to the time, date or location for the download.

26 If any party serves a written objection to the proposed ECM download
27 protocol or to the date, time and location of the download at least ten (10) days prior
28 to the proposed date for the download (by facsimile or other means), then no

1 downloading of data from the ECM shall proceed in the absence of a written
2 stipulation by all parties, setting forth the protocol to be followed and the date, time
3 and location for the download.

4 If the parties cannot reach a written stipulation as set forth in the above, then
5 no such downloading of data from the ECM shall be performed until the Court in
6 which this action is being litigated issues an order setting forth the protocol to be
7 followed and the date, time and location for the download.

8 All parties have the right to be present, and to have their representatives
9 present, for the download of data from the ECM.

10 No downloading or testing that will alter, conceal, or otherwise adversely
11 affect the evidentiary state of the ECM or the integrity of the data thereon shall take
12 place without either the written consent of all parties for the proposed activity or an
13 order of the Court herein.

14 The ECM download conducted by Mr. Reust may be video taped by any party
15 desiring to video tape the inspection and such party shall be the custodian of the
16 video tape. Any other party may obtain a copy of any video tape taken by another
17 party upon paying the reasonable duplication expense therefor.

18 If any observing party or that party's representative observes any activity by
19 the person or persons performing any download of data from the ECM which is
20 inconsistent with the approved protocol, then that party/party's representative, may
21 declare the download there and then suspended with such unauthorized activity to
22 immediately cease, pending further order of the Court and/or agreement of the
23 parties to this Stipulation.

24 Promptly after Mr. Reust has downloaded the data from the ECM, he will
25 preserve the data in electronic and printed formats and will interpret the data by
26 incorporating it in a chart, graph, spreadsheet, timeline or other easily understandable
27 format. He will provide all parties with his interpretation of the data and an
28 electronic copy of the data downloaded from the ECM.

C. Costs

All parties will divide the costs of downloading, interpretation and preservation of the data from the ECM attached to the motor of the 1998 Kenworth tractor.

D. Other

An objection made pursuant to this stipulation shall be deemed duly served by being sent via facsimile or e-mail to the respective counsel of record herein and sender receiving a written confirmation that the facsimile transmission was delivered.

Only the parties to this Stipulation may enforce the terms and conditions ordered herein and such enforcement shall extend to the parties, their agents, experts and any other person(s) employed by or retained by the parties hereto as well as Timothy Reust. By executing this Stipulation the undersigned counsel, on behalf of their clients, and Timothy Reust stipulate and agree to be bound by its provisions.

This Stipulation to preserve evidence may be signed in counterparts and facsimile signatures will be equally effective as original signatures.

IT IS SO STIPULATED.

Dated:

WESTON HERZOG LLP

JONATHON J. HERZOG
Attorneys for Defendants
NEW YORK REXEL, INC. and
SUMMERS GROUP, INC. dba REXEL
NORCAL VALLEY

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1 Dated:

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BERTRAND LeBLANC, II
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CANTEX, INC.

6

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8 Dated:

WILCOXEN, CALLAHAN, MONTGOMERY &
DEACON

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12

GARY B. CALLAHAN
Attorneys for Plaintiffs

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14 Dated:

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16

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TIMOTHY REUST

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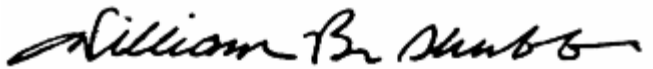
19

20 IT IS SO ORDERED.

21 Dated: June 24, 2005

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WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 4640 Lankershim Blvd., Suite 514, North Hollywood, CA 91602.

On June 24, 2005, I served the within document(s) described as:

STIPULATION FOR ORDER PRESERVING EVIDENCE; ORDER THEREON

on the interested parties in this action as stated below:

Gary Callahan, Esq.	Bertrand "Randy" LeBlanc
Wilcoxon Callahan Montgomery & Deacon	Carroll, Burdick & McDonough
2114 K Street	44 Montgomery Street
Sacramento, CA 95816	Suite 400
	San Francisco, CA 94104

☒ (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth above. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at North Hollywood, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I certify that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 24, 2005, at North Hollywood, California.

I declare under penalty of perjury that the foregoing is true and correct.

LYNN SULLIVAN

(Type or print name)

(Signature)